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Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5051
Minority (202) 225-5074

December 29, 2010

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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Genachowski:

Please find enclosed a copy of a letter previously sent to you. We have not yet received a response to this letter. We ask that you please review the enclosed letter and respond accordingly.

We look forward to your response. Thank you for your attention to this important matter. Please contact the Committee staff at (202) 225-5074 with any questions.

Sincerely,


Darrell Issa
Ranking Member

cc Edolphus Towns
Chairman

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AND "JOSEPH" CAO, LOUISIANA

November 13, 2009

Mr. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

Recent media reports have raised concerns that the development of Net Neutrality regulations at the Federal Communications Commission (FCC) may have been inappropriately influenced by White House involvement in the proposed rulemaking. Specifically, questions have been raised regarding the circumstances surrounding the rulemaking and potential violations of the *ex parte* rules.

You are well aware that as an independent government body, the FCC has restrictions and disclosure requirements for off-the-record communications to protect its ability to make decisions in an impartial and open environment. In an effort to "ensure the fairness and integrity of its decision-making,"¹ the FCC implemented the *ex parte* rules. The rules outline restrictions on *ex parte* presentations to FCC decision-makers in three types of proceedings- restricted, permit-but-disclose, and exempt. Under any type of proceeding, presentations from an "agency or branch of the Federal Government or its staff"² that seek to alter or influence the ultimate decision are prohibited without public disclosure.

Recently, a senior White House technology advisor and staunch advocate for Net Neutrality, Susan Crawford, resigned her post, citing a need to return to her teaching position at the University of Michigan. Ms. Crawford joined the Obama Administration during the transition to assist in overseeing the Administration's review of the FCC and was "credited with putting in place the general policy overlays...that guided many of the

¹ FCC Ex Parte Rule, 47 C.F.R. §1.1200.

² FCC Ex Parte Rule, 47 C.F.R. §1.1204.

Administration's hiring and appointments to the [FCC]...."³ In the wake of her recent resignation, reports surfaced that Ms. Crawford may have fallen out of favor with senior White House officials. Reportedly, according to White House sources:

[S]enior Obama officials were unaware of how radical the draft Net Neutrality regulations were when they were initially circulated to Obama administration officials several weeks ago.... In the end, the proposed regulations were only slightly moderated from the original language FCC Chairman Julius Genachowski, a Crawford ally, circulated.⁴

These comments suggest that Obama Administration officials had knowledge of and potentially contributed to crafting of these proposed regulations.

Additionally, on September 21, 2009, both you and President Obama separately, but nearly simultaneously, announced your intention to circulate proposed regulations on preserving an open internet. Alone, the timing of this announcement went unnoticed but in light of the recent media reports, questions have arisen surrounding the coordination and involvement of the White House in crafting the proposed regulations. Any undisclosed or private participation by the White House in the development of the proposed regulations would be a violation of the *ex parte* rules and a serious breach of the independent proceedings of the FCC.

So the Committee can better understand the circumstances surrounding the White House's involvement in the development of the proposed Net Neutrality regulations, I request answers to each of the following questions.

1. Under what circumstances is it appropriate for FCC Commissioners, their staff, or Commission staff to work closely or collaboratively with White House staff on proposed rulemakings?
2. Did White House economic advisor Lawrence Summers have any communications with FCC personnel regarding the proposed regulations? If so, please identify all such communications and produce all documents or records related to those communications.
3. Identify all communications between FCC personnel and Susan Crawford or any other member of the White House staff and produce all documents or records related to those communications.
4. Did any Commission staff report potential violations of the *ex parte* rules due to off-the-record communications from White House personnel to the FCC General

³ The Prowler, *Showdown Alarms*, American Spectator, Nov. 2, 2009, <http://spectator.org/archives/2009/11/02/for-petes-sake>

⁴ *Id.*

Counsel? If so, what actions did the Commission's General Counsel take to review the allegation? Please provide all documents related to alleged violations of the *ex parte* rules involving White House personnel.

5. If you or any personnel at the FCC communicated with White House staff regarding the proposed rulemaking, with whom did you or other Commission decisions-makers communicate and what was the nature of that communication? Please provide all documents relating to communications between Commission personnel and the White House regarding the proposed regulations.
6. If any FCC personnel communicated with White House staff regarding the September 21, 2009 speech, with whom did they communicate and what was the nature of the communication? Please provide all documents relating to discussions with Commission personnel relevant to the September 21, 2009 speech.
7. We understand the proposed regulations were shared by the FCC with White House staff. When were the proposed regulations first circulated to the White House? How were they circulated? If you or Commission personnel worked with White House staff to circulate the draft regulations, with whom did you or FCC staff communicate with and what was the nature of these communications?
8. Were you or any member of your staff contacted by White House personnel regarding the proposed regulations? If so, who contacted you, when, and what was the nature of the communication?


As you know, the *ex parte* rules exist to protect the fair and open decision-making process at the FCC. Is important to the Committee to gain a complete understanding of how these rules are being monitored and that the Commission is operating in an appropriate and independent environment.

By November 24, 2009, please provide your written responses and all requested records, emails and other documents relevant to these questions. In your written response, please certify that you have fully complied with this information and document request.

The Honorable Julius Genachowski
November 13, 2009
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Thank you for your cooperation in this matter. If you have any questions regarding this request, please contact John Ohly or Steve Castor of the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman
Mr. Austin Schlick, FCC General Counsel



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

February 23, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Issa:

Below I address your questions, recounted in your letters of November 13, 2009 and December 29, 2010, concerning communications between the Federal Communications Commission and the Executive Branch about proposed open Internet rules.

The Commission is an independent agency, and its "ex parte" disclosure rules apply to certain communications between Commissioners and Commission staff and members of the Administration or Congress. See 47 C.F.R. 1.1200 et seq. The Communications Act of 1934, as amended, does not prohibit communications between Commissioners and Commission staff and members of the Administration. Section 5(a) of the Communications Act specifically anticipates that the Chairman will "represent the Commission in all matters requiring conferences or communications with other governmental officers, departments or agencies." Under the Commission's procedural rules, ex parte disclosure requirements generally come into effect upon the release of a Notice of Proposed Rulemaking (NPRM). 47 C.F.R. § 1.1206(a)(1). In this instance, consistent with general agency practice, prior to the release of the *Open Internet NPRM* on October 22, 2009 the open Internet matter was an "exempt proceeding" under the ex parte rules. See *Broadband Industry Practices Notice of Inquiry*, 22 FCC Rcd 7894, 7898 at para. 12 (2007). Thus, for example, no disclosure requirements applied in September 2009. Moreover, the Commission's Office of General Counsel is not aware of any potential violations of the ex parte rules in connection with the subject matter of your letter.

We take our ex parte rules seriously, and our practice is to inform parties and the public of ex parte violations when we become aware of them. Consistent with that practice, on January 11, 2011, the Commission's Office of General Counsel issued a Notice of Prohibited Presentations (enclosed) in the open Internet proceeding.

Please let me know if I can be of further assistance.

Sincerely,



Julius Genachowski